IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 7 OF 2006

Capt. Ravinder Kataria. ... Petitioner.

V/s.

Tops Security Ltd. ... Respondent.

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Ms. Nita Rajda i/b. DSR Associates for the Petitioners.

Mr. Burzin Somandy i/b. Vinod Juwale for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

15TH March 2007.

P.C. :

1. There are conflicting versions of the manner in which the services of the Petitioner came to an end. The management of the Respondent claims that the services of the Petitioner were terminated on 24th August 2005 on the ground that the Petitioner was guilty of serious mis-conduct inter-alia involving a misappropriation of funds to the extent of Rs.20.00 lacs. The Petitioner was engaged at the material time as a Regional Head of the North Zone. The case of the Petitioner on the other hand is that he had tendered his resignation from

service on 23rd August 2005. The Respondent has relied on an Exit Interview Form signed by the Petitioner which shows that the services were terminated. The Petitioner contends that the document is not genuine or authentic.

2. These are obviously matters of factual dispute which would require evidence to be adduced at the trial of a suit. The claim of the Petitioner in the statutory notice of winding up under Sections 433 and 434 of the Companies Act, 1956 was for the payment of an amount of Rs.9.00 lacs. In Exhibit "S" to the Company Petition, the total claim has been increased to Rs.12.35 lacs. Of the claim, an amount of Rs.8.65 lacs is towards re-imbursement of expenses which have been borne on behalf of the Respondent. Whether such expenses were in fact incurred and if so, whether they were authorised cannot be determined in the exercise of the jurisdiction in winding up proceedings. The Petitioner would have to be relegated to the remedy of filing a Civil Suit.

3. In so far as the claim for unpaid salary is concerned, an amount of Rs.1,58,664/- has been deposited by the Respondent in pursuance of the interim order dated 1st March 2007. Counsel appearing on behalf of the Respondent states that the Respondent has no objection if the aforesaid amount is permitted to be withdrawn by the Petitioner without prejudice to the rights and contentions of the Respondent. The Petitioner is hence permitted to withdraw the amount.

4. On behalf of the Respondent, it has been stated that a Suit is being filed within a period of 72 hours for the recovery of the loss which according to the Respondent is due and payable by the Petitioner on account of the damage sustained by the Respondent.

5. Having regard to the nature of the claim in the Company Petition, it cannot be said that it is founded on a debt which is due and payable or on an amount which is presently ascertained.

6. The Company Petition will therefore have to be dismissed leaving it open to the Petitioner to take recourse to the remedies available in a Suit for the recovery of his alleged dues.

7. The Company Petition is accordingly dismissed.